



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/158079

PRELIMINARY RECITALS

Pursuant to a petition filed May 30, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on September 24, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly denied Petitioner's medical prior authorization request for a speech therapy evaluation followed by speech therapy two times per week for 12 weeks.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By Letter: Theresa Walske

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. Petitioner is a four year old boy who received a heart transplant in 2010. He is cognitively and developmentally delayed with Barth Syndrome. He receives all feeding and nutrition through a G-Tube. His language is significantly delayed. Petitioner's primary care physician referred him for speech therapy. The outpatient speech-language center at Children's hospital did an informal assessment, and found that Petitioner's receptive language skills were in the 6-9 month level with some scattered skills in the 12-15 month level. The provider further determined that Petitioner's expressive language were at the 9-12 month level with some scattered skills at the 12-15 month level.
2. On April 24, 2014 the provider, Children's Hospital of Wisconsin, requested authorization for a speech therapy evaluation and 2 sessions of speech therapy per week for 12 weeks beginning April 24, 2014, PA no. [REDACTED]. The cost of the evaluation is \$554.25 and the cost of the speech/hearing therapy is \$7,188.00 for a total of \$7,742.25.
3. On May 12, 2014 the agency denied Petitioner's request because Petitioner's individualized education plan (IEP) states that he "has communication needs in the area of receptive and expressive language and speech sound production which will be met by the special education teacher [] as part of [REDACTED] daily classroom routine." The agency noted that there was no coordination of care between Children's Hospital and the school. In addition, Petitioner participated in the birth to 3 program to address his communication through the Milwaukee Public Schools, and there was no documentation that Petitioner progressed and benefited from those previous services.
4. On June 2, 2014 the Division of Hearings and Appeals received Petitioner's request for fair hearing.

DISCUSSION

Speech therapy are covered by MA under Wis. Adm. Code, §DHS 107.18. Generally it is covered without need for prior authorization (PA) for 35 treatment days, per spell of illness. Wis. Adm. Code, §DHS 107.18(2)(b). After that, PA for additional treatment is necessary. *Id.* If PA is requested, it is the provider's responsibility to justify the need for the service. Wis. Adm. Code, §DHS 107.02(3)(d)6. If the person receives therapy in school or from another private therapist, there must be documentation of why the additional therapy is needed and coordination between the therapists. Prior Authorization Guidelines Manual, p. 111.001.02, no. 3.

In reviewing a PA request the agency must consider the general PA criteria found at §DHS 107.02(3) and the definition of "medical necessity" found at §DHS 101.03(96m). §DHS 101.03(96m) defines medical necessity in the following pertinent provisions:

"Medically necessary" means a medical assistance service under ch. HFS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury, or disability; and
- (b) Meets the following standards:

1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability; ...
3. Is appropriate with regard to generally accepted standards of medical practice; ...
6. Is not duplicative with respect to other services being provided to the recipient; ...
8. ...[I]s cost effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and

9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

The agency interprets the code provisions to mean that a person must continue to improve for therapy to continue, specifically to increase the ability to do activities of daily living. In addition, at some point the therapy program should be carried over to the home, without the need for professional intervention. Finally the MA program will not pay for therapy if the person already receives therapy from a different provider.

The reason for the denial of services in this case is that petitioner is receiving services in school that are meant to address the same issues that the private therapy is addressing. The agency persuasively lays out the Children's Hospital of Wisconsin Out Patient Speech-Language Pathology Assessment Note and the Milwaukee Public Schools Individual Education Program (IEP) goals. The agency is correct to note that the improvement goals for Petitioner are very similar. However, it is also important to note that the services provided through the IEP at the school are administered by Petitioner's special education teacher. The special education teacher is not a speech language pathologist. In addition, this is not a one on one service that would develop a plan for in home care that may alleviate the need for speech therapy services. As Petitioner develops and gets older this plan of care could be revisited. At that time Petitioner's progress would also be assessed.

The agency also denied this prior authorization because Petitioner participated in the birth to 3 Program and there was nothing in the prior authorization request that indicated Petitioner progressed as a result of these services. The provider notes that Petitioner has not received any speech therapy services since age 3. The also agency does not state what services were specifically provided in the birth to 3 Program. The agency does not note whether these services were provided by a speech language pathologist or a special education teacher. In addition it is over 1 year since those services were provided. One year is a significant period of develop for a child. In this case it is more than one quarter of the child's life. Even if the child did not progress from those services, the child still could significantly benefit from these services as the provider indicates.

Petitioner is a 4 year old boy with a G-tube for feeding. The recommendation was for speech therapy 2-3 times per week. The provider, Children's Hospital of Wisconsin, conservatively requested only 2 therapy sessions per week. The provider also requested these services for a short duration of only 12 weeks. The provider states that the prognosis for this 4 year old is fair. This 4 year old is not currently receiving any speech therapy services from a speech therapist. For all those reasons, I am approving this request.

CONCLUSIONS OF LAW

The requested therapy can be approved because Petitioner is not getting speech therapy in school from a speech therapist.

THEREFORE, it is

ORDERED

That the services requested in PA no. [REDACTED] are hereby approved. Children's hospital of Wisconsin should file a new PA request for the services for the period beginning April 24, 2014, along with a copy of this decision, for approval.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 29th day of September, 2014

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 29, 2014.

Division of Health Care Access and Accountability

